

These notes refer to the Adoption and Children Act (Northern Ireland) 2022 (c.18) which received Royal Assent on 27 April 2022

Adoption and Children Act (Northern Ireland) 2022

EXPLANATORY NOTES

BACKGROUND AND POLICY OBJECTIVES

Changes to the Adoption Service

7. The measures to improve adoption support included in the Act are intended to encourage more people to come forward to adopt and to help adoptive placements to succeed. The Act places a duty on adoption authorities to make arrangements for the provision of adoption support services, according to arrangements to be set out in regulations. It also provides all new adopted children and adoptive parents with a new right to request an assessment of their needs for adoption support services and places a duty on authorities to provide support services which have been assessed as needed. The assessment will link in with other Health and Social Care bodies and the Education Authority functions where the need for such services are identified, with the aim of identifying a co-ordinated package of support to help adoptions succeed.
8. To encourage more people to apply to adopt and to build confidence in the assessment process, the *Adopting the Future* strategy committed the Department to provide an independent review where prospective adopters consider an adoption panel has turned down their application unfairly. The Act includes powers enabling the Department to establish a mechanism to review adoption agency determinations. The Department will be able to appoint an independent body to review, at the prospective adopters' request, applications that adoption agencies have indicated they are minded to turn down.
9. The Act also includes measures intended to tackle delays in the adoption process. It makes express provision to enable the Department to establish a Northern Ireland Adoption and Children Act Register to suggest matches between children waiting to be adopted and approved prospective adopters. The Register is intended to reduce delay both for adopters and children. The Act also includes measures requiring courts to draw up timetables for resolving adoption cases without delay, and to give directions to ensure the timetable is adhered to.
10. The Act changes the process of adoption itself and places the needs and welfare of children at the centre of the adoption process. The Act makes the welfare of

the child the paramount consideration for courts and adoption agencies in all decisions relating to adoption, including in deciding whether to dispense with a birth parent's consent to adoption. It provides a welfare checklist which must be applied by the court and adoption agencies. The paramountcy test brings adoption legislation into line with the Children Order.

11. The Act establishes new legal processes for placing a child for adoption through an adoption agency. Two routes are provided: birth parents may give consent to placement or the adoption agency may secure a placement order from the court, authorising it to place a child with adopters whom they select. An adoption agency must apply for a placement order where it is satisfied that a child should be adopted but the parents do not consent to placement or have withdrawn such consent.
12. The intention is to ensure decisions about whether adoption is the right option for the child, whether the birth parents consented and, if not, whether parental consent should be dispensed with are taken earlier in the adoption process than at present, with court involvement where necessary. The system aims to provide greater certainty and stability for children by dealing as far as possible with consent to placement for adoption before they have been placed; to minimise the uncertainty for prospective adopters, who possibly face a contested court hearing at the adoption order stage; and to reduce the extent to which birth families are faced with a *fait accompli* at the final adoption hearing.
13. The Act reaffirms with amendment existing safeguards under the Adoption (Northern Ireland) Order 1987 that restrict who can lawfully arrange adoptions and advertise about adoption. This includes advertising about adoption through traditional media and electronically. It also provides restrictions on the preparation of certain reports and prohibits certain payments or rewards in connection with adoption.
14. The Act also makes new provision for the disclosure to adopted people of information held by an adoption agency in connection with their adoption, and for access to their birth records. These provisions also cover the release of adoption agency information to birth relatives and others. The Act provides for a single point of access to identifying information through adoption agencies, as the bodies best placed to provide the support and counselling needed for this sensitive task. The new regulatory framework for the disclosure of information about a person's adoption seeks to recognise the interests of all those involved. Regulations may be made under the Act providing for the exercise of discretion by adoption agencies in this area to be reviewed by an independent panel that may be established by the Department. These provisions only apply to adoptions that take place after the Act has been brought into force. For adoptions which took place prior to that, provision will be made for intermediary services to assist adopted adults and birth relatives to obtain information about an adoption and to facilitate contact between adopted adults, their birth relatives and prescribed persons who are related to an adopted person

by blood, marriage or civil partnership, or by virtue of the adopted person's adoption.

15. The Act incorporates most of the provisions of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 ("the 2001 Act"), which will largely be repealed when the Act is implemented. The 2001 Act provides a statutory basis for the regulation of intercountry adoption. It enabled Northern Ireland to ratify the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, which was concluded at The Hague on 29 May 1993 ("the Hague Convention"). Section 12 also inserts Article 58ZA into the Adoption (Northern Ireland) Order 1987, which makes it an offence to bring children into the United Kingdom without following prescribed procedures. Article 58ZA is repealed and section 82 of the Act makes comparable provision relating to restrictions on bringing children into the United Kingdom for adoption.
16. To ensure that people living in the United Kingdom wishing to adopt a child from overseas follow the appropriate approval procedure, whether they adopt the child abroad or in the United Kingdom, the Act enhances the safeguards in the 2001 Act. It incorporates the restriction in that Act on bringing a child into the United Kingdom for the purpose of adoption by a British resident, and provides a new restriction where a child is brought into the United Kingdom if he or she has been adopted by a British resident under an adoption order made under the law of a country outside the United Kingdom, the Channel Islands and the Isle of Man, which is not a Hague Convention adoption, within the previous 12 months.
17. The Act includes provisions to enable the Department to restrict adoptions from certain specified countries where there are concerns about practices in connection with the adoption of children. This aligns with current practice in England, Scotland and Wales.
18. The Department gave a commitment, following the consultation on its draft strategy, *Adopting the Future*, to introduce a new option for permanence, a special guardianship order. This is intended to meet the needs of children for whom adoption is not appropriate but who cannot return to their birth parents and could benefit from the permanence provided by a legally secure family placement. For example, some older children (who may, for instance, be being looked after in long-term foster placements) do not wish to be adopted and have their legal relationship with their parents severed, but could benefit from greater security and permanence. Adoption may also not be the best option for some children being cared for on a permanent basis by members of their wider family.
19. The Act amends the Children Order to provide for the new special guardianship order. It sets out who may apply for an order, the circumstances in which orders may be made and their nature and effect. Special guardians must be aged 18 years or over. Joint applications for special guardianship may be made and people applying jointly need not be married or in a civil partnership. The

court may also make special guardianship orders in any family proceedings if it considers an order should be made. In each application the Health and Social Care Trust must assess the suitability of the applicants and prepare a report to the court. Unlike an adoption order, a special guardianship order may be varied or revoked by application, but only in limited circumstances.

20. A special guardian acquires parental responsibility for the child and may exercise it to the exclusion of others with parental responsibility, except in very exceptional circumstances. The intention is that, in order to provide the child with the stability he needs, the special guardian has clear responsibility for all the day to day decisions about caring for the child or young person and for taking the decisions about their upbringing. But, unlike adoption, the child's legal relationship with his or her birth parents is not severed. They remain legally the child's parents, though their ability to exercise their parental responsibility is limited. They retain the right to consent, or not, to the child's placement for adoption or adoption. The Act also provides for special guardianship support services to be provided, including financial support.